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REPORT TO THE AUDIT COMMITTEE

AUDIT COMMITTEE'S RESPONSE TO REPORTS OF THE SAN DIEGO COUNTY  
GRAND JURY

**INTRODUCTION**

The San Diego County Grand Jury (Grand Jury) has issued two reports requesting that the City of San Diego Audit Committee and the City Auditor comment on certain of its findings and recommendations. The reports are entitled "Ethics in Government – Code of Ethics, Internal Controls, Fraud Hotlines," filed on May 27, 2010, and "San Diego City's Financial Crisis- The Past, Present, and Future," filed on June 8, 2010.<sup>1</sup> For the reasons discussed below, the Audit Committee and City Auditor should provide their comments on the reports to the City Council as it is the City Council's responsibility to respond on behalf of the City of San Diego.

**DISCUSSION**

California Penal Code section 933(c) requires the governing body of any public agency, which the Grand Jury has reviewed, to comment to the Presiding Judge of the Superior Court on the findings and recommendations of a final report pertaining to matters under the control of the governing body. Such comment must be made no later than 90 days after the Grand Jury files its report with the Clerk of the Court.

California Penal Code section 933.05, provides the manner in which comments to the final report are to be made:

(a) As to each grand jury *finding*, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

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<sup>1</sup> In the "Ethics in Government" report, the specific findings are numbered 05 - 08. The specific recommendations addressed to both the Audit Committee and the City Auditor in that report are numbered 10-63 and 10-64. The recommendation addressed only to the City Auditor is numbered 10-65. In the "Financial Crisis" report, the specific findings are numbered 05, and 17 - 20. The specific recommendations addressed to both the Audit Committee and the City Auditor in that report are numbered 10-128 and 10-132.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) As to each grand jury *recommendation*, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.  
(Emphasis added.)

As noted above, California Penal Code section 993(c) requires that the "governing body of the agency" comment on matters "under the control of the governing body." The "governing body" of the City of San Diego is the City Council. In the two Grand Jury reports referenced above, the Audit Committee and City Auditor are listed under the heading "Responding Agency." Although California Penal Code section 993(d) states that the term "agency" includes a department, the responsibility to respond is still on the governing body. Neither the Audit Committee or the City Auditor have authority under California Penal Code section 993(c) to respond directly and independently to the Grand Jury on the City's behalf.<sup>2</sup>

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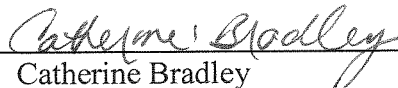
<sup>2</sup> We have confirmed that this is the practice of the County of San Diego when a department is requested to respond to a Grand Jury report. That is, the department submits its recommended response for approval by the Board of Supervisors.

**CONCLUSION**

For the reasons discussed above, we recommend the Audit Committee and the City Auditor determine their responses to the Grand Jury's findings and recommendations. The comments should be reduced to writing, approved by the Audit Committee, and directed to the City Council. The Council should then incorporate those comments, as appropriate, in its response to the Grand Jury reports as required by California Penal Code section 993(c).

Respectfully submitted,

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